

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

ALBERT BROWN

PLAINTIFF

VS.

CIVIL ACTION NO. 3:16-CV-651 WHB-JCG

**MITCH ADCOCK, IN HIS INDIVIDUAL
AND OFFICIAL CAPACITIES,
MARY CURRIER, IN HER INDIVIDUAL
AND OFFICIAL CAPACITIES, AND
MISSISSIPPI DEPARTMENT OF
HEALTH**

DEFENDANTS

DEFENDANTS' MOTION TO STRIKE

COME NOW, Defendants Mississippi State Department of Health ("MSDH"), Mitchell Adcock, and Dr. Mary Currier, and move the Court to strike certain evidence offered by Plaintiff in opposition to Defendants' Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 12(f). As grounds therefore, MDH would show unto the Court as follows:

1. Plaintiff's "Exhibit T – Settlement Correspondence" or "Settlement Correspondence," which Plaintiff has offered in opposition to Defendants' motion for summary judgment is a privileged communication protected by Federal Rule Evidence 408(a)(2). According to Rule 408, "[e]vidence of the following is not admissible--on behalf of any party--either to prove or disprove the validity or amount of a disputed claim ...conduct or a statement made during compromise negotiations about the claim..."

2. The communication within "Exhibit T – Settlement Communication" is a privileged communication made "during compromise negotiations about the claim." Fed. R. Evid. 408(a)(2). Plaintiff acknowledges its status as a settlement communication on page 8 of his Memorandum Brief in Support of Plaintiff's Response to Defendants' Motion for Summary Judgment.

3. Throughout the Memorandum Brief in Support of Plaintiff's Response to Defendants' Motion for Summary Judgment, Plaintiff cites Exhibit T – Settlement Correspondence in direct contradiction to the privilege pursuant to Federal Rule of Evidence 408. See Doc. 47 at 3; Doc. 49 at 8, 12, 15, 25, 26. Plaintiff offers these references to the communication for the sole purpose of proving the validity of his claim. More specifically, Plaintiff attempts to prove that he had “ten years of directly-related experience” making Plaintiff qualified for the DHI position and that MSDH retaliated against him. See Doc. 49, at 15. Plaintiff cannot use this communication to “prove or disprove the validity ... of a disputed claim.” Fed. R. Evid. 401(a)(2).

4. “The intent of Rule 408 ‘is to encourage settlements by fostering free and full discussion of the issues.’” *Major Mart, Inc. v. Mitchell Distributing Co. Inc.*, 46 F. Supp. 3d 639, 672 (S. D. Miss. 2014) (quoting *Ramada Dev. Co. v. Rauch*, 644 F.2d 1097, 1106 (5th Cir. 1981)). The offered evidence is “the direct product of settlement negotiation[,]” and thus deserves protection as a privileged communication. *Id.*

WHEREFORE, the above stated reasons, Defendants respectfully request the Court to strike the exhibit and all references thereof offered by Plaintiff in opposition to Defendants' Motion for Summary Judgment.¹

Respectfully submitted, this 6th day of September, 2017.

¹ Due to the simple nature of the relief requested, Defendants request that they be excused from the requirement of filing a memorandum brief in accordance with L.U. Civ. R. 7(b)(4).

**MITCH ADCOCK, MARY CURRIER, AND
THE MISSISSIPPI STATE DEPARTMENT OF
HEALTH**

BY: s/ Ashley Eley Cannady

Armin J. Moeller, Jr., MSB#3399
Ashley Eley Cannady, MSB#101253
Balch & Bingham LLP
188 E. Capitol Street, Suite 1400
Jackson, MS 39201
Telephone: (601) 961-9900
Facsimile: (601) 961-4466
amoeller@balch.com
acannady@balch.com

CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Lisa M. Ross
Post Office Box 11264
Jackson, MS 39283-1264

This the 6th day of September, 2017.

s/ Ashley Eley Cannady

ASHLEY ELEY CANNADY